IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 24373 of 2007(B)

CMA.40/2006 of ADDL.DISTRICT COURT-I,MAVELIKKARA
OS.8/2006 of MUNSIFF COURT, MAVELIKKARA
(IA 74/2006)

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PETITIONER:

DEENAMMA CHANDY
KARANCHERIL VEEDU
THRIPERUMTHURA VILLAGE
ERAMATHOOR MURI

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENTS:

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1. MARIYAMMA JOSEPH
PARAYAKATTIL VEEDU,
THRIPPERUMTHURA VILAGE
ERAMATHOOR MURI

2. SARAMMA JOSEPH OF -DO- -DO-

3. FREDDY JOSEPH OF -DO- -DO-

4. BABU OF -DO- -DO-

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.24373 OF 2007

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Dated this the 10th day of August 2007

JUDGMENT

This writ petition is filed challenging the orders passed by the Munsiff's Court, Mavelikkara and the I Addl.District Judge, Mavelikkara in an injunction application. The plaintiff had instituted a suit for permanent injunction to restrain defendants from interfering with the peaceful possession over the plaint schedule property having an extent of 38.30 ares.

2. On the other hand, defendants would contend that the property having an extent of 20 cents belonged to them and they are in possession of the property for more than 100 years and therefore with respect to that property, the plaintiff is not entitled to injunction as prayed for. In the court below, the commission report was marked as Ext.C1 and reference was made to some of the documents produced by the defendants and ultimately the court refused to grant injunction in favour of the plaintiff. Against that decision a Civil Miscellaneous Appeal was preferred which also ended in dismissal and it is against that order the present writ petition is filed.

3. At the outset, I may like to point out that the jurisdiction of this

court under Article 226 of the Constitution of India is limited and it is not expected to reappraise the facts again and again which has been done by the courts below. Being a suit for injunction, the plaintiff, in order to obtain temporary injunction firstly has to come with clean hands and secondly has to prove the prima facie case, the balance of convenience and irreparable injury. The Commissioner, who inspected the property and submitted a report had reported before the court that 10 cents of property is lying separately from the plaint schedule, i.e. so stated in paragraph 2 of his report. In the subsequent paragraphs the report would reveal that there had been attempted demolision of a portion of the building and there are indications to show that there were some inhabitants in their premises. It is at that stage the suit O.S.No.211 of 1982 is filed by the predecessor in interest looms large and it was dismissed in 1983. Petitioner's husband had not preferred any appeal in the said suit and so the decision has become final. It is at that stage both the courts below referred to the Commissioner's report as well as the document produced for perusal by the defendants elaborately. Suppose nobody has been occupying the property for considerable length of time there would not have been any remnants of a living in that premises. Here, the Commissioner was able to see such remnants. The court also referred to the ration cards, electoral cards and

identity cards. So far as the present plaint schedule property is concerned, it is seen from the order of the first court that there are two door numbers, i.e. CT GP Ward No.1 and XIV in one door frame and KL/KP I-20 in another door frame. So documents produced are in relation to door No.KL/KP I - 20 which is an indicative of the factum of possession other than the plaintiff. Learned counsel for the petitioner strongly contends before me that the legal position is that possession follows title and that aspect had not been taken into consideration. As far as injunction application is concerned, until and unless one is satisfied that the person who claims injunction is in possession of the property, the courts will not be inclined to grant an order of injunction. Two courts on facts found that adequate evidence is not forthcoming to establish the possession of the plaintiff in the case. I cannot re-appreciate or re-look into the entire matter to have a different approach under Article 227 of the Constitution.

Therefore I find no reason to interfere with the orders passed by the courts below. Writ petition lacks merit and the same is dismissed. But I make it clear that when the trial court ultimately disposes of the matter, it shall do so untrammelled by the observations contained in any of the orders including the judgment of this court, after affording opportunity to both sides to adduce evidence in support of their contentions. The suit is of the

year 2006 and if there is time, I direct the court below to expedite the matter and dispose it of in accordance with law, as expeditiously as possible.

M.N.KRISHNAN, JUDGE

Cdp/-